



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1991

Mr. Philip W. Barnes
Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR91-526

Dear Commissioner Barnes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13740.

You have received a request for information relating to a pending investigation of an individual who allegedly violated state insurance laws. Specifically, the requestor seeks:

1. Type of license maintained by licensee and whether or not license is currently in good standing.
2. The date of initial licensure and subsequent licensure dates.
3. Whether or not licensee has been in good standing throughout the full period of licensure. If licensee has not been in good standing, please state the relevant periods in which the license was not in good standing and the violations committed.
4. Whether or not license was obtained by examination or reciprocity.

You advise us that some of the information will be made available to the requestor, specifically, items 1, 2, and 4. You claim, however, that the information requested in item 3 relates to an "investigation [which] will culminate in an administrative contested case with the named individual as a party," and that the requested information is thus excepted from required public disclosure by section 3(a)(3). You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(11).

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 551 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Parties to a lawsuit must obtain relevant information through the normal process of discovery. *Id.* You advise us that a contested administrative case will result from your investigation. Open Records Decision No. 368 (1983) held that "the litigation exception may be applied to records relating to a contested case before an administrative agency." *Id.* (quoting Open Records Decision No. 301 (1982)). You have demonstrated that the requested information relates to the anticipated litigation. Accordingly, unless the information requested has already been disclosed through the discovery process or by court order, you may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. Because we resolve your request under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-526.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/mc

Ref.: ID#s 13740, 13959

cc: Mr. Eugene A. Petrovits
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